

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FEDERAL DEPOSIT INSURANCE)	
CORPORATION, as Receiver of Heritage)	
Community Bank,)	
)	Case No. 10 C 07009
Plaintiff,)	
v.)	
)	Judge Rebecca R. Pallmeyer
JOHN M. SAPHIR; PATRICK FANNING;)	
STEPHEN L. FAYDASH; WILLIAM E.)	
HETLER; THOMAS JELINEK; LORI A.)	
MOSELEY; STEPHEN ANTHONY;)	
JERRY C. BRUCER; JAMES K.)	
CHAMPION; ANDREW B. NATHAN; and)	
MARY C. MILLS,)	
)	
Defendants.)	

ANDREW B. NATHAN'S MOTION TO DISMISS

Defendant Andrew B. Nathan ("Nathan"), by and through his attorneys, Barack Ferrazzano Kirschbaum and Nagelberg LLP, moves the Court to dismiss the Complaint against him pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

In support of this motion, Nathan states as follows:

1. Heritage Community Bank (the "Bank") was closed by the Illinois Department of Financial and Professional Regulation on February 27, 2009.
2. The Federal Deposit Insurance Corporation ("FDIC") was appointed as receiver of the Bank on February 27, 2009.
3. At the time of the closure of the Bank, Nathan was an outside director and a member of the loan committee of the Bank.

4. The FDIC, as receiver of the Bank, has filed this action against Nathan and ten (10) other former directors or officers of the Bank. The suit alleges claims of negligence, gross negligence and breach of fiduciary duty.

5. The Complaint alleges six Counts against Nathan: two counts for gross negligence; two counts for simple negligence; and two counts for breach of fiduciary duty.

6. Nathan moves to dismiss all six Counts that are asserted against him.

7. Simultaneous with the filing of this motion, Defendants John M. Saphir, and James Champion and Stephen Anthony have filed, pursuant to Federal Rule of Civil Procedure 12(b)(6), motions to dismiss, respectively, Counts I through VI and Counts I through III of the Complaint due to failure to state a claim.

8. To best serve justice and avoid unnecessary or duplicative effort, time or expense to the Court and the parties involved, Nathan adopts and joins in the request for relief sought and the legal arguments provided in defendants' motions and supporting memoranda.

9. Counts VII through IX of Plaintiff's Complaint are not alleged against Nathan, so no response by Nathan is required on those counts.

WHEREFORE, Nathan respectfully moves the Court to dismiss the Complaint against him for all the reasons stated in John M. Saphir's and James Champion and Stephen Anthony's motions to dismiss and supporting memoranda and grant such other and further relief that the Court deems just and appropriate.

Dated: January 24, 2011

Respectfully submitted,

ANDREW B. NATHAN

By: s/ Sarah Waxman
One of his attorneys

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CERTIFICATE OF SERVICE

I, Sarah Waxman, an attorney, hereby certify that on January 24, 2011, service of a copy of the foregoing *Notice of Motion* and *Andrew B. Nathan's Motion to Dismiss* was accomplished pursuant to ECF as to filing users in compliance with Fed. Rule Civ. P. 5(b)(2)(D).

s/ Sarah Waxman _____